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NO. 87-648

Supreme Court, U.S.  
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IN THE  
SUPREME COURT OF THE UNITED STATES  
  
OCTOBER TERM, 1987

COMMONWEALTH OF PENNSYLVANIA,  
Petitioner  
  
v.

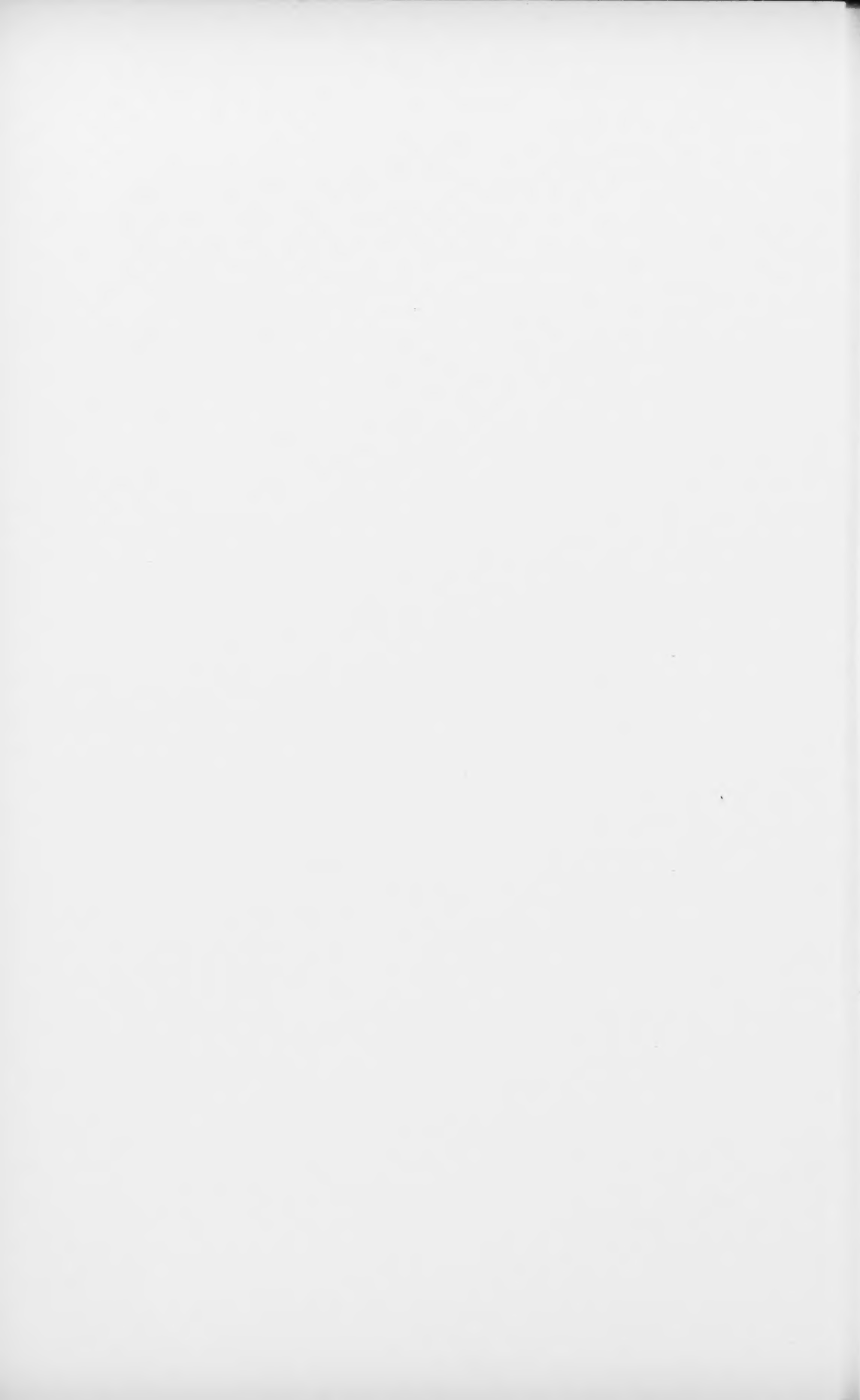
MICHAEL CEPHAS,  
Respondent

REPLY BRIEF FOR PETITIONER

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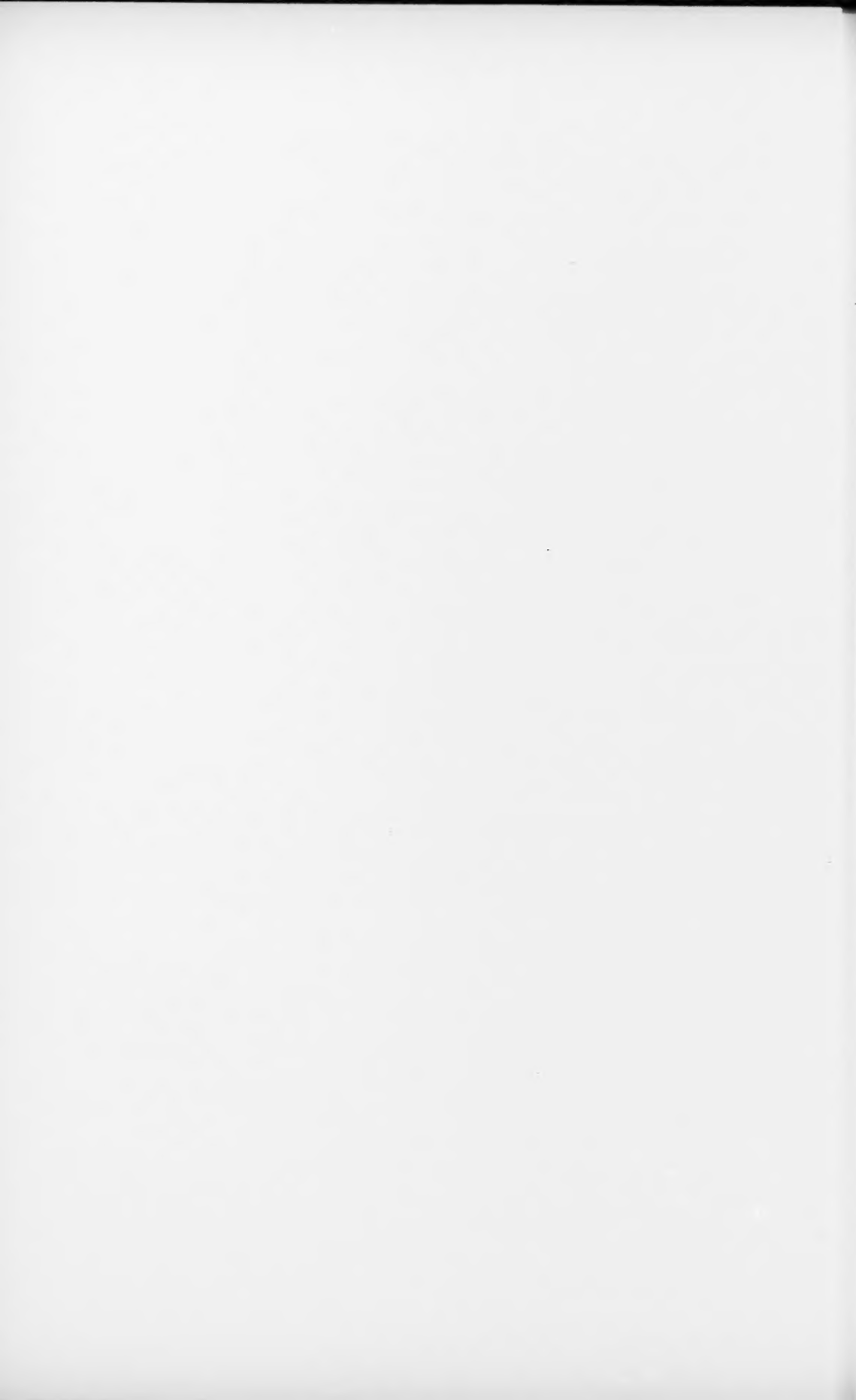
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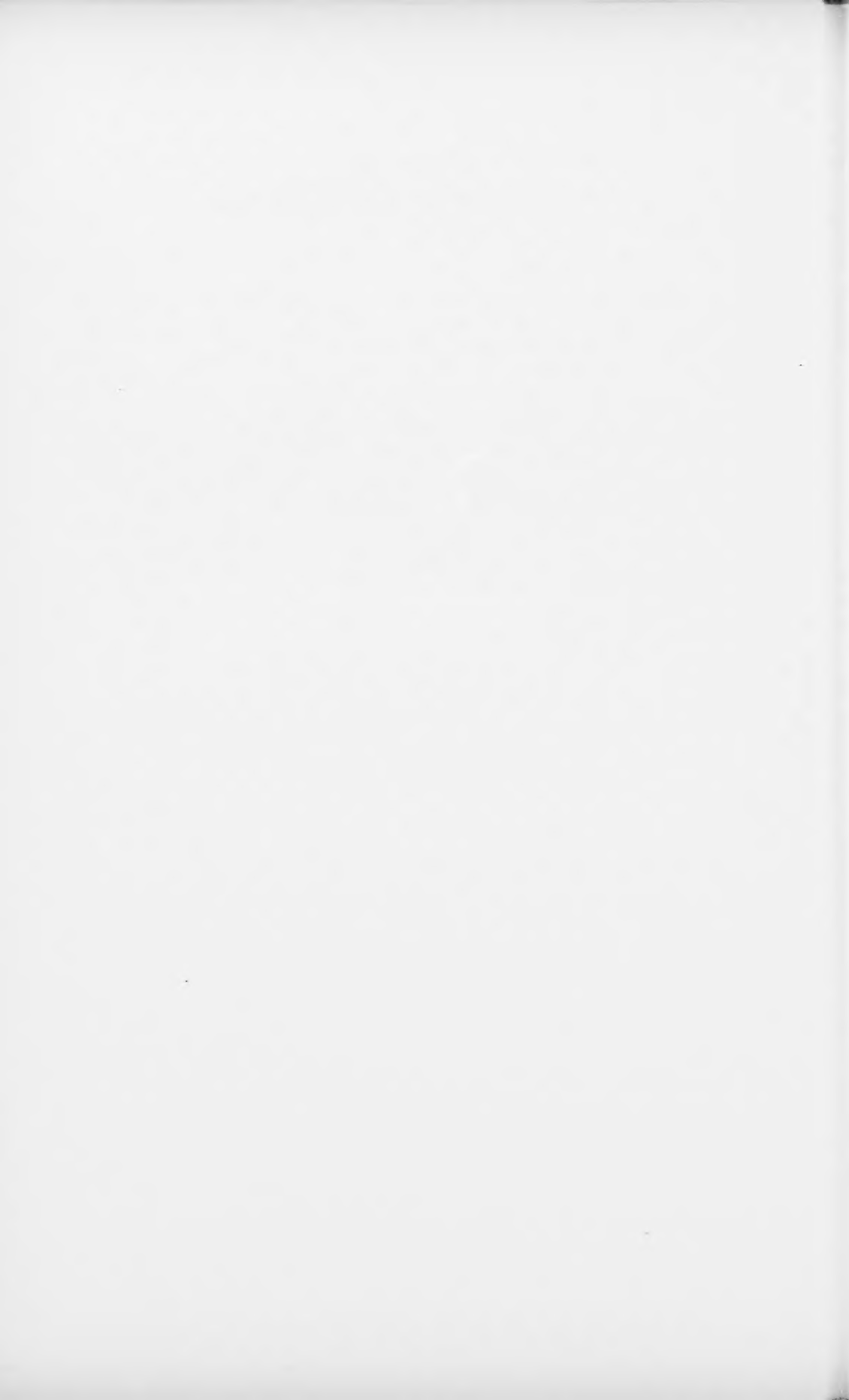
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REPLY BRIEF FOR PETITIONER

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SUPPLEMENTAL ARGUMENT

ALL ISSUES PRESENTED IN THE PETITION FOR WRIT OF CERTIORARI WERE RAISED IN AND PASSED UPON BY THE PENNSYLVANIA COURTS.

Respondent claims that this Court cannot review Johnson v. Zerbst, 304 U.S. 458 (1938), to determine whether the analysis in that opinion applies Miranda's prophylactic rule (Respondent's Brief in





Opposition at 8). Specifically, respondent claims that such a legal review would constitute consideration of a distinct legal issue not presented in the state courts. This argument lacks factual or legal merit.

In Illinois v. Gates, 462 U.S. 213 (1983), this Court declined to consider whether the fourth amendment exclusionary rule should be applied where the police acted in good faith. It declined to review this issue because the petitioner had not raised in the state courts the question of whether the exclusionary rule was "appropriate in a particular context" in addition to the separate question of "whether the Fourth Amendment rights of the party ... were violated by police conduct." 462 U.S. at 223.

Here, petitioner properly raised the separate issues of (1) whether respondent demonstrated a sufficient understanding of his situation to permit a proper waiver of



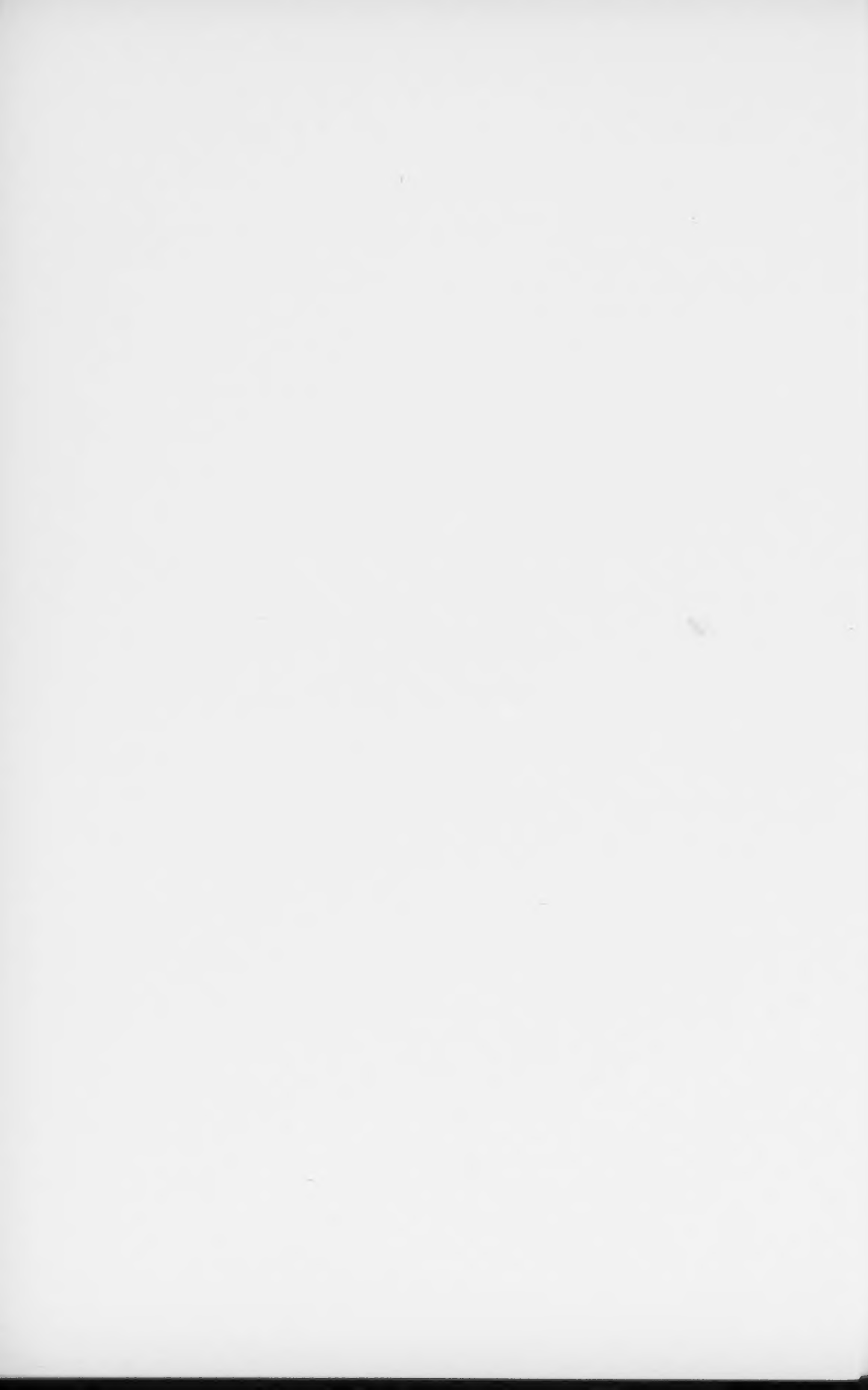
the Miranda warnings, and (2) whether the exclusionary rule was appropriate where the police acted in good faith and scrupulously complied with the law. Both issues were argued by petitioner to the trial court (see Superior Court Reproduced Record at 11A-14A, 266A-272A), to the Pennsylvania Superior Court (see Brief for Appellant at 11-20) and in its request for discretionary review by the Pennsylvania Supreme Court (see Petition for Allowance of Appeal at 9-17). The Pennsylvania courts rejected petitioner's claims, deeming the critical issue to be whether the psychiatric evidence supported a finding that respondent did not knowingly and intelligently understand the Miranda warnings.

Throughout this litigation, petitioner has consistently asserted (1) that respondent's objective behavior evidenced a sufficient understanding of the Miranda warnings and (2) that suppression was



inappropriate because the police actions were lawful and proper. These arguments necessarily imply the converse -- that suppression is inappropriate even if a defendant does not subjectively possess a knowing and intelligent understanding of the Miranda warnings. Quite simply, once petitioner asserted that the relevant inquiry was respondent's objective behavior and the propriety of the police behavior, petitioner hardly was required to list every factor he believed to be irrelevant. Likewise, petitioner was not required to distinguish every case upon which respondent might rely to support his claim.

Thus, respondent incorrectly claims that this Court cannot review the Johnson v. Zerbst opinion to determine whether its waiver analysis applies to Miranda claims. Such a legal review of case law is merely an enlargement of the issues squarely presented to and rejected by the state

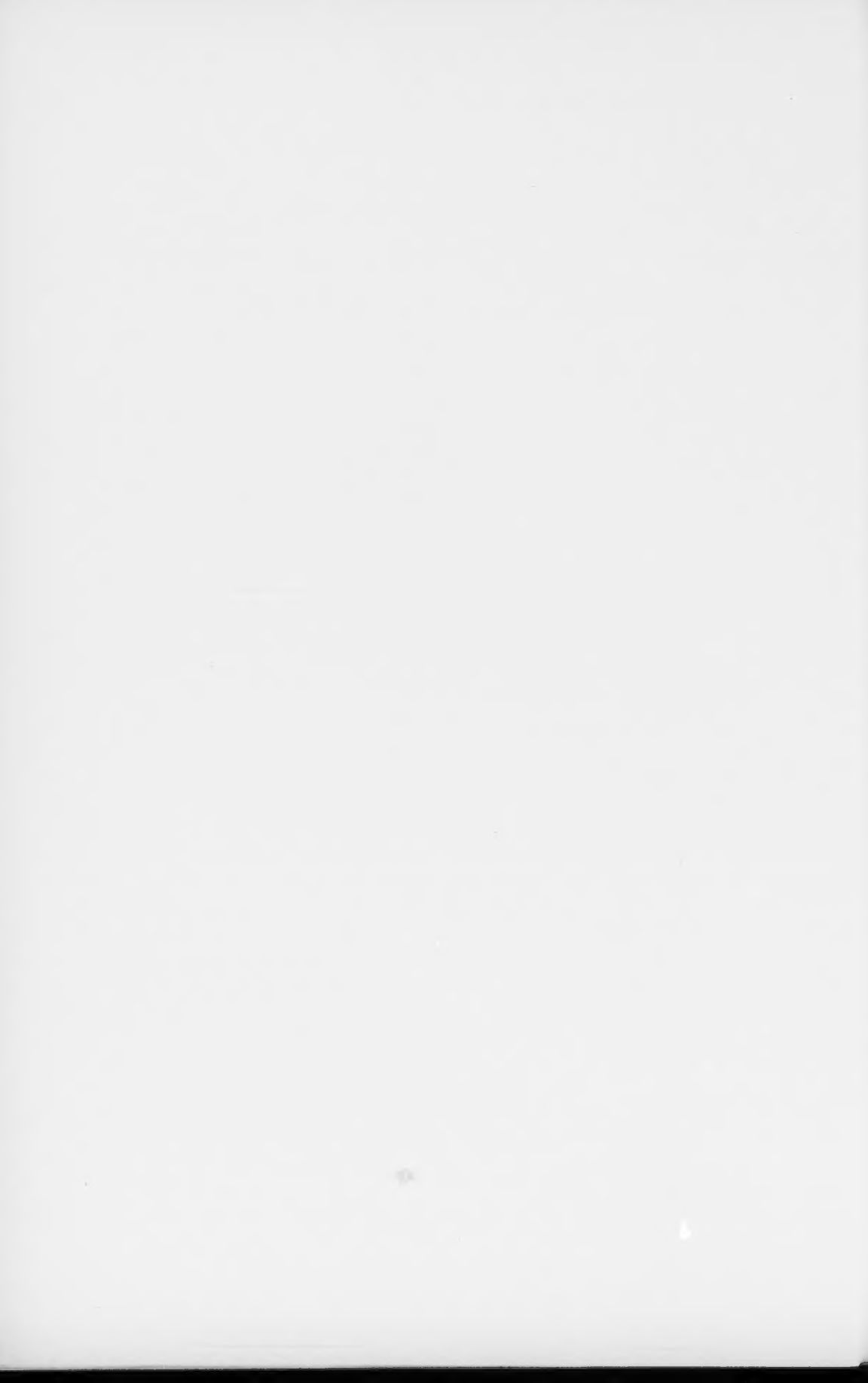


courts.<sup>1</sup> Because petitioner properly raised in the state courts all of the issues presented in its petition for certiorari, the instant case is particularly appropriate for this Court's review.

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<sup>1</sup>In Dewey v. DeMoines, 173 U.S. 193, 197-198 (1899) (cited in Illinois v. Gates), this Court explained that

[i]f the question were only an enlargement of the one mentioned in the assignment of errors, or if it were so connected with it in substance as to form but another ground or reason for alleging the invalidity of the [lower court's] judgment, we should have no hesitation in holding the assignment sufficient to permit the question now raised and argued. Parties are not confined here to the same arguments which were advanced in the courts below upon a federal question there discussed.





### CONCLUSION

For the foregoing reasons, and for the reasons set forth in its Petition for Writ of Certiorari, the Commonwealth of Pennsylvania respectfully requests that this Court issue a Writ of Certiorari to review the decision below.

Respectfully submitted,

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